



ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 52 AND 81

[EPA-R05-OAR-2009-0730; FRL-9629-2]

**Approval and Promulgation of Implementation Plans and
Designation of Areas for Air Quality Planning Purposes;
Wisconsin; Redesignation of the Milwaukee-Racine and Sheboygan
Areas to Attainment for 1997 8-hour Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve requests from the Wisconsin Department of Natural Resources (WDNR) to redesignate the Milwaukee-Racine and Sheboygan areas to attainment for the 1997 8-hour ozone standard, because the requests meet the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Milwaukee-Racine area includes Milwaukee, Ozaukee, Racine, Washington, Waukesha, and Kenosha Counties. The Sheboygan area includes Sheboygan County. WDNR submitted these requests on September 11, 2009, and supplemented the submittal on November 16, 2011. This proposed approval also involves several related actions. EPA is proposing to approve, as revisions to the Wisconsin State Implementation Plan (SIP), the state's plans for maintaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) through 2022 in

the above-mentioned areas. EPA is also proposing to approve the 2005 comprehensive emissions inventories for the Milwaukee-Racine and Sheboygan areas as meeting the requirements of the CAA. Finally, EPA finds adequate and is proposing to approve the state's 2015 and 2022 Motor Vehicle Emission Budgets (MVEBs) for the Milwaukee-Racine and Sheboygan areas.

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0730, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: Aburano.Douglas@epa.gov.
3. Fax: (312)408-2279.
4. Mail: Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand delivery: Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of

operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2009-0730. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-

ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino,
Environmental Engineer, Attainment Planning and Maintenance
Section, Air Programs Branch (AR-18J), U.S. Environmental
Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago,
Illinois 60604, (312) 886-1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever
"we," "us," or "our" is used, we mean EPA. This supplementary
information section is arranged as follows:

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Actions Is EPA Proposing to Take?

EPA is proposing to determine that the Milwaukee-Racine and Sheboygan ozone nonattainment areas have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Wisconsin's requests to change the legal designations of the Milwaukee-Racine and Sheboygan areas from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA is also proposing to approve Wisconsin's maintenance plan SIP revisions for the Milwaukee-Racine and Sheboygan areas (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Milwaukee-Racine and Sheboygan areas in attainment of the ozone NAAQS through 2022. EPA is proposing to approve the 2005 comprehensive emissions inventories for the Milwaukee-Racine and Sheboygan areas as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA is proposing to approve the newly-established 2015 and 2022 MVEBs for the Milwaukee-Racine and Sheboygan areas. The adequacy comment period for the MVEBs began on December 6, 2011, with EPA's posting of the availability of the submittal on EPA's Adequacy website (at <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>). The adequacy comment period for these MVEBs ended on January 5,

2012. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. See section V. B. of this rulemaking, "Adequacy of Wisconsin's MVEBs," for further explanation on this process. Therefore, EPA finds adequate, and is proposing to approve, the state's 2015 and 2022 MVEBs for use in future transportation conformity analyses for the areas.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_x and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56852), the Milwaukee-Racine and Sheboygan areas were designated as severe and moderate nonattainment areas, respectively, under the 1-hour ozone NAAQS. The Sheboygan area was subsequently redesignated to attainment of the 1-hour standard on August 26, 1996 (61 FR 43675). Although the Milwaukee-Racine area was monitoring attainment of the

1-hour ozone standard by the end of the 2005 ozone season, at the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Milwaukee-Racine area was never redesignated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001-2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in title I, part D, 42 U.S.C. 7501-7509a and 7511-7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951, April 30, 2004), an area was classified

under subpart 2 based on its 8-hour ozone design value,¹ if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Milwaukee-Racine and Sheboygan areas were designated as subpart 2, 8-hour ozone moderate nonattainment areas by EPA on April 30, 2004 (69 FR 23857 and 23947) based on air quality monitoring data from 2001-2003 (69 FR 23860).

40 CFR 50.10 and appendix I of 40 CFR part 50 provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness. See 40 CFR part 50, appendix I, 2.3(d).

¹ To determine the 8-hour design value for an area, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentration is calculated for each monitor within an area. The highest three-year average is the design value for the area.

WDNR submitted requests to redesignate the Milwaukee-Racine and Sheboygan areas to attainment for the 1997 8-hour ozone standard on September 11, 2009, and supplemented the request on November 16, 2011. Complete, quality-assured and certified data for the 2006-2008, 2007-2009, and 2008-2010 time periods indicate the 8-hour NAAQS for ozone, as promulgated in 1997, has been attained for the Milwaukee-Racine and Sheboygan areas. In addition, available monitoring data for 2011 continue to show the areas in attainment of the standard. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. EPA has not yet designated areas under the 2008 standard. The actions addressed in this proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist. v. EPA*, the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's Phase 1 Implementation Rule for the 1997 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C.Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.*, Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: provisions related to classifications for areas currently classified under subpart 2 of title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the D.C. Circuit let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged.

The June 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four

measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007, decision clarified that the court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the D.C. Circuit's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with

redesignation of this area to attainment, because even in light of the court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements under the 8-Hour Ozone Standard

With respect to the 1997 8-hour standard, the Milwaukee-Racine and Sheboygan areas are classified under subpart 2. The June 8, 2007, opinion clarifies that the court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The court's decision therefore upholds EPA's classifications for those areas classified under subpart 2 for the 8-hour ozone standard.

3. Requirements under the 1-Hour Ozone Standard

a. Milwaukee-Racine Area

In its June 8, 2007 decision the D.C. Circuit limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements which apply by virtue of the area's classification for the 1-hour ozone standard. See 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005). As set forth in more detail below, the area must also address four additional anti-backsliding provisions identified by the court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone standard requirements that continue to apply after revocation of the 1-hour ozone NAAQS to former 1-hour ozone nonattainment areas. 40 CFR 51.905(a)(1)(i) provides that:

The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section.

40 CFR 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that:

Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

- (1) Reasonably available control technology (RACT).
- (2) Inspection and maintenance programs (I/M).
- (3) Major source applicability cut-offs for purposes of RACT.
- (4) Rate of Progress (ROP) reductions.
- (5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 182(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.²

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided section 182(e)(4) of the CAA.²

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) Transportation controls under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled provisions of section 182(d)(1) of the CAA.

(12) NO_x requirements under section 182(f) of the CAA.

(13) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

Pursuant to 40 CFR 51.905(c), the Milwaukee-Racine area is subject to the obligations set forth in 40 CFR 51.905(a) and 40 CFR 51.900(f).

In addition, the D.C. Circuit held that EPA should have

² Applies only to areas classified as extreme; therefore, not a requirement for the Milwaukee-Racine area.

retained four additional measures in its anti-backsliding provisions: (1) nonattainment area NSR ; (2) section 185 penalty fees; (3) contingency measures under section 172(c)(9) or 182(c)(9) of the Act; and (4) 1-hour MVEBs that were not yet replaced by 8-hour emissions budgets. EPA has addressed these four requirements as follows:

With respect to NSR, EPA has determined that an area being redesignated need not have an approved nonattainment NSR program, provided that the state demonstrates maintenance of the standard in the area without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." This policy assumes that the state's PSD program will become effective in the area immediately upon redesignation to attainment. Consequently EPA concludes that an approved NSR program is not an applicable requirement for purposes of redesignation. See the more detailed explanations in the following rulemakings: Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-70, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831,

31836-31837, June 21, 1996). Furthermore, EPA approved Wisconsin's NSR program on January 18, 1995 (60 FR 3538), February 6, 2006 (71 FR 5979), March 8, 2006 (71 FR 55062) and May 16, 2006 (71 FR 28274).

With regard to the requirement for section 185 source penalty fees, the Milwaukee-Racine area was classified as severe nonattainment under the 1-hour standard and is, therefore, subject to this requirement. EPA approved an excess VOC emissions fee rule for the Milwaukee-Racine area on June 25, 2002 (67 FR 42729). On April 24, 2009 (74 FR 18641), EPA published a final rule making a determination that the Milwaukee-Racine area had attained the 1-hour ozone standard and confirming that this finding of attainment relieved Wisconsin of the obligation to adopt section 185 source penalty fee regulations for this area.

With respect to the 1-hour MVEBs that were not yet replaced by 8-hour emissions budgets, the conformity portion of the court's June 8, 2007 ruling clarified that, for those areas with MVEBs for the 1-hour ozone standard, anti-backsliding requires that these MVEBs be used for 8-hour conformity determinations until replaced by MVEBs for the 8-hour ozone standard. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity

regulations at 40 CFR part 93. Note below that EPA is proposing to find adequate and approve 8-hour MVEBs established by Wisconsin's 8-hour ozone maintenance plans for the Milwaukee and Sheboygan areas.

With respect to the contingency measure requirements under sections 172(c)(9) and 182(c)(9) of the CAA, these requirements must be addressed in state ozone Reasonable Further Progress (RFP) and attainment demonstration plans. Wisconsin addressed these requirements in the 1-hour ozone RFP and attainment demonstration plans for the Milwaukee-Racine area by adopting and implementing extra VOC and NO_x emission controls that go beyond the emission reductions needed for RFP and attainment of the 1-hour ozone standard. EPA approved these ozone control plans, including their contingency elements as follows: VOC 15 percent RFP plan, March 22, 1996 (61 FR 11735); post-1996 RFP plan, November 10, 2001 (66 FR 51572); and 1-hour ozone attainment demonstration and post-1999 RFP plan, November 13, 2001 (66 FR 56931). Therefore, Wisconsin has met the contingency measure requirements of sections 172(c)(9) and 182(c)(9) of the CAA for the 1-hour ozone standard.

b. Sheboygan Area

With respect to the 1-hour standard requirements, the Sheboygan area was an attainment area subject to a CAA section

175A maintenance plan under the 1-hour standard. The D.C. Circuit's decisions do not impact redesignation requests for these types of areas, except to the extent that the court, in its June 8, 2007, decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding provisions require that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. All conformity determinations must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the court found were not properly retained, the Sheboygan area is an attainment area subject to a maintenance plan for the 1-hour standard, and the nonattainment NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus the decision in *South Coast* should not alter requirements that would preclude EPA from proposing or finalizing the redesignations of these areas.

IV. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically,

section 107(d)(3)(E) allows for redesignation provided that:

(1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

"Ozone and Carbon Monoxide Design Value Calculations,"
Memorandum from William G. Laxton, Director Technical Support
Division, June 18, 1990;

"Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

"Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

"Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

"Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

"State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

"Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1-10, November 30, 1993.

"Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

"Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. What Is EPA's Analysis of the State's Request?

A. Redesignation

EPA is proposing to determine that the Milwaukee-Racine and Sheboygan areas have met all applicable redesignation criteria under CAA section 107(d)(3)(E). The bases for EPA's proposed approval of the redesignation requests are as follows:

1. The Areas Have Attained the 1997 8-hour Ozone NAAQS.

(Section 107(d)(3)(E)(i))

On March 1, 2011 (76 FR 11080), EPA determined that the Milwaukee-Racine and Sheboygan areas have attained the 1997

8-hour ozone NAAQS based on monitoring data for 2006-2008 and 2007-2009, and 2008-2010 time periods. An area may be considered to be attaining the 1997 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and 40 CFR part 50, appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

All 2006-2010 monitoring data have been quality-assured in accordance with 40 CFR 58.10, recorded in the AQS database, and certified. The data meet the completeness criteria in 40 CFR 50, appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three-year period. Monitoring data is presented in Table 1 below. In addition,

available preliminary monitoring data for 2011 continue to show the areas in attainment of the standard.

Table 1. Annual 4th high daily maximum 8-hour ozone concentrations and three-year averages of 4th high daily maximum 8-hour ozone concentrations.

Area	County	Monitor	2006 4 th high (ppm)	2007 4 th high (ppm)	2008 4 th high (ppm)	2009 4 th high (ppm)	2010 4 th high (ppm)	2006- 2008 average (ppm)	2007- 2009 average (ppm)	2008- 2010 average (ppm)
Milwaukee -Racine	Kenosha	Pleasant Prairie 55-059-0019	0.079	0.085	0.072	0.071	0.081	0.078	0.076	0.074
	Milwaukee	16 th St. HC 55-079-0010	0.064	0.067	0.059	0.066	0.065	0.063	0.064	0.063
		WDNR SERHQ 55-079-0026	0.068	0.075	0.063	0.067	0.076	0.068	0.068	0.068
		UWM-North 55-079-0041	0.073	0.078	0.065	0.068	n/a	0.072	0.070	n/a
		Bayside 55-079-0085	0.073	0.083	0.069	0.072	0.082	0.075	0.074	0.074
	Ozaukee	Grafton 55-089-0008	0.071	0.082	0.064	0.067	0.075	0.072	0.071	0.068
		Harr. Beach 55-089-0009	0.072	0.084	0.067	0.070	0.078	0.074	0.073	0.071
	Racine	Racine 55-101-0017	0.071	0.077	0.065	0.071	0.078	0.071	0.071	0.071
	Washington	Slinger 55-131-0009	0.066	0.071	0.060	0.065	0.064	0.065	0.065	0.063
	Waukesha	Waukesha 55-133-0027	0.067	0.072	0.060	0.059	0.062	0.066	0.063	0.060
Sheboygan	Sheboygan	Kohler Andre Park 55-117-0006	0.083	0.088	0.075	0.074	0.085	0.082	0.079	0.078

In addition, as discussed below with respect to the maintenance plan, WDNR has committed to continue to operate an EPA-approved monitoring network in the areas. WDNR will continue to quality assure monitoring data in accordance with

40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines. In summary, EPA believes that the data provide an adequate demonstration that the Milwaukee-Racine and Sheboygan areas have attained and continue to attain the 8-hour ozone NAAQS.

2. The Area Has Met All Applicable Requirements under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k). (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We are proposing to determine that Wisconsin has met all currently applicable SIP requirements for purposes of redesignation of the Milwaukee-Racine and Sheboygan areas to attainment of the 1997 8-hour ozone standard under section 110 and part D of the CAA, in accordance with section 107(d)(3)(E)(v). We are also proposing to determine that the Wisconsin SIP, with the exception of the comprehensive emission inventory and certain VOC RACT rules, is fully approved with respect to all applicable requirements for purposes of redesignation to attainment of the 1997 8-hour ozone standard, in accordance with section 107(d)(3)(E)(ii) of the CAA. As discussed below, in this action EPA is proposing to approve Wisconsin's 2005 comprehensive emissions inventory as meeting the comprehensive emissions inventory requirement of section

182(a)(1) for the areas. EPA is taking action on the Wisconsin VOC RACT regulations in a separate rule.

Recognizing that the comprehensive emissions inventory and VOC RACT rules must be approved on or before we complete final rulemaking approving the redesignation requests, we determine here that, assuming that this occurs, Wisconsin will have met all applicable section 110 and part D SIP requirements of the CAA for purposes of approval of Wisconsin's ozone redesignation requests for the Milwaukee-Racine and Sheboygan areas. In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved or will be fully approved under section 110(k) of the CAA by the time we complete final rulemaking on Wisconsin's ozone redesignation requests for the Milwaukee-Racine and Sheboygan areas. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a

state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA determined that the areas have attained the 1997 8-hour ozone standard, under 40 CFR 51.918, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the reasonably available control measure (RACM) requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the areas as long as they continue to

attain the NAAQS and will cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans ... provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.").

a. The Milwaukee-Racine and Sheboygan Areas Have Met All Applicable Requirements under Section 110 and Part D of the CAA for Purposes of Redesignation

i. Section 110 General SIP requirements.

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, PSD, and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to

establish programs to address transport of air pollutants, e.g., the NO_x SIP Call.³ However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we conclude that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures

³ On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_x in order to reduce the transport of ozone and

which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Wisconsin's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. EPA has previously approved provisions of the Wisconsin SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.2570). Further, in submittals dated December 12, 2007, January 24, 2011, and March 28, 2011, Wisconsin confirmed that the state continues to meet the

ozone precursors. Wisconsin was not included in EPA's NO_x SIP call.

section 110 requirements for the 8-hour ozone standard. EPA approved some elements of this Wisconsin submittal on July 13, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 8-hour ozone nonattainment status of the Milwaukee-Racine and Sheboygan areas. Therefore, EPA concludes that these infrastructure SIP elements are not applicable requirements for purposes of review of the state's 8-hour ozone redesignation request.

ii. Part D Requirements.

EPA has determined that, if EPA finalizes the approval of the 2005 comprehensive emissions inventory, discussed in section V.C. of this rulemaking, and the VOC RACT submittal, discussed below under the heading "Subpart 2 Section 182(a) and (b) Requirements," the Wisconsin SIP will meet the SIP requirements applicable for purposes of redesignation under part D of the CAA for the Milwaukee-Racine and Sheboygan areas. Subpart 1 of part D, found in sections 172-176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

The Milwaukee-Racine and Sheboygan areas were classified as moderate areas under subpart 2. Therefore, the state must meet the applicable requirements of both subpart 1 and subpart 2 of part D. The applicable subpart 1 requirements are contained in sections 172(c)(1)-(9) and in section 176. The applicable subpart 2 requirements are contained in sections 182(a) and (b) (marginal and moderate nonattainment area requirements).

Subpart 1 Section 172 Requirements.

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Milwaukee-Racine and Sheboygan areas are contained in sections 172(c)(1)-(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment for the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all states containing nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because

attainment has been reached in the Milwaukee-Racine and Sheboygan areas, no additional measures are needed to provide for attainment and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. See 40 CFR 51.918.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Milwaukee-Racine and Sheboygan areas have demonstrated monitored attainment of the 1997 8-hour ozone NAAQS. (General Preamble, 57 FR 13564). See also 40 CFR 51.918. In addition, because the Milwaukee-Racine and Sheboygan areas have attained the ozone NAAQS and are no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and

modified major stationary sources anywhere in the nonattainment area. EPA approved Wisconsin's current NSR program on December 17, 2008 (73 FR 76558 and 76560). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Wisconsin has demonstrated that the Milwaukee-Racine and Sheboygan areas will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Milwaukee-Racine and Sheboygan areas upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Wisconsin SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Subpart 1, Section 176 Conformity Requirements.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See also* 60 FR 62748, 62749-62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996 (61 FR 39329) and August 27, 1996 (61 FR 43970), respectively. Wisconsin has submitted onroad motor vehicle budgets for the Milwaukee-Racine area of 21.08 tons per day (tpd) and 15.98 tpd VOC and 51.22 tpd and 31.91 tpd NO_x for the years 2015 and 2022, respectively.

Wisconsin has submitted onroad motor vehicle budgets for the Sheboygan area of 2.024 tpd and 1.615 tpd VOC and 4.321 tpd and 2.778 tpd NO_x for the years 2015 and 2022, respectively. The areas must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

Subpart 2 Section 182(a) and (b) Requirements

Comprehensive Emissions Inventory. Section 182(a)(1) requires the submission of a comprehensive emissions inventory. As part of Wisconsin's redesignation request for the Milwaukee-Racine and Sheboygan areas, the state submitted a 2005 comprehensive emissions inventory. As discussed below in section V.C., EPA is proposing to approve the 2005 inventory as meeting the section 182(a)(1) comprehensive emissions inventory requirement.

Emissions Statements. EPA approved Wisconsin's emission statement SIP, as required by section 182(a)(3)(B), on December 6, 1993 (58 FR 64155).

Reasonable Further Progress and Attainment Demonstration. On September 11, 2009, Wisconsin submitted an attainment demonstration and RFP plans for the Milwaukee-Racine and Sheboygan areas as required by section 182(b)(1) of the CAA. Because attainment has been reached, section 182(b)(1)

requirements are no longer considered to be applicable as long as the area continues to attain the standard. If EPA finalizes approval of the redesignation of the Milwaukee-Racine and Sheboygan areas, EPA will take no further action on the attainment demonstration and RFP plans submitted by Wisconsin for the areas.

VOC RACT Requirements. Section 182(b)(2) requires states with moderate nonattainment areas to implement RACT under section 172(c)(1) with respect to each of the following: (1) all sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and, (3) all other major non-CTG stationary sources. As required under the 1-hour ozone standard, Wisconsin submitted VOC RACT rules covering the second and third categories. EPA approved these VOC RACT rules on the following dates:

August 15, 1994 (59 FR 41709), April 27, 1995 (60 FR 20643), June 30, 1995 (60 FR 34170), July 28, 1995 (60 FR 38722), February 12, 1996 (61 FR 5307), February 13, 1996 (61 FR 5514), April 4, 1996 (61 FR 14972), April 9, 1996 (61 FR 15706), April 25, 1996 (61 FR 18257), July 17, 1996 (61 FR 37216), August 29, 1996 (61 FR 45327), June 8, 2000 (65 FR 36351), November 13, 2001 (66 FR 56931), and September 22, 2006 (71 FR

55287). With respect to the first category, EPA issued CTGs for five source categories in September 2006 and three additional source categories in September 2007. Areas classified as moderate and above were required to submit VOC RACT for the source categories covered by these CTGs, by September 2007 and September 2008, respectively. Wisconsin submitted SIP revisions to address these CTGs on September 1, 2009, and November 16, 2011. EPA is taking action on these revisions in a separate rulemaking action. Full approval of Wisconsin's RACT submittals is a prerequisite for approval of the redesignation of the Milwaukee-Racine and Sheboygan areas to attainment.

NO_x RACT. Section 182(f) establishes NO_x requirements for ozone nonattainment areas. EPA approved Wisconsin's NO_x RACT SIP on October 19, 2010 (75 FR 64155).

Stage II Vapor Recovery. Section 182(b)(3) requires states to submit Stage II rules no later than November 15, 1992. EPA approved Wisconsin's Stage II rule on August 13, 1993 (58 FR 43080), August 15, 1994 (59 FR 41709), and April 27, 1995 (60 FR 206423).

Vehicle Inspection and Maintenance (I/M). EPA's final I/M regulations in 40 CFR part 85 required the states to submit a fully adopted I/M program by November 15, 1993. EPA approved

Wisconsin's enhanced I/M program on January 12, 1995 (60 FR 2881) and August 16, 2001 (66 FR 42949).

Thus, as discussed above, with approval of the comprehensive emissions inventory and Wisconsin's VOC RACT submittals, the Milwaukee-Racine and Sheboygan areas will satisfy the requirements applicable for purposes of redesignation under section 110 and part D of the CAA.

b. The Milwaukee-Racine and Sheboygan Areas Have a Fully Approved Applicable SIP for Purposes of Redesignation under Section 110(k) of the CAA.

If EPA issues a final approval of the comprehensive emissions inventory and Wisconsin's VOC RACT submittals, EPA will have fully approved the Wisconsin SIP for the Milwaukee-Racine and Sheboygan areas under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page three of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989-990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Wisconsin has adopted and submitted, and EPA has fully

approved, provisions addressing the various required SIP elements applicable to the Milwaukee-Racine and Sheboygan areas under the 1-hour ozone standard. In this action, EPA is proposing to approve Wisconsin's 2005 comprehensive emissions inventory for the Milwaukee-Racine and Sheboygan areas as meeting the requirement of section 182(a)(1) of the CAA. In a separate rule, EPA will take action on the Wisconsin VOC RACT submittals.

c. The Milwaukee-Racine Area Has a Fully Approved SIP and Meets Anti-Backsliding Requirements Under the 1-Hour Ozone Standard

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone NAAQS requirements that continue to apply after the revocation of the 1-hour ozone NAAQS for former 1-hour ozone nonattainment areas. 40 CFR 51.905(a)(1)(i) provides that:

The area remains subject to the obligation to adopt and implement the applicable requirements defined in 40 CFR 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section.

40 CFR 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), provides that:

Applicable requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

- (1) Reasonably available control technology (RACT).
- (2) Inspection and maintenance programs (I/M).
- (3) Major source applicability cut-offs for purposes of RACT.
- (4) Rate of Progress (ROP) reductions.
- (5) Stage II vapor recovery.
- (6) Clean fuels fleet program under section 182(c)(4) of the CAA.
- (7) Clean fuels for boilers under section 182(e)(3) of the CAA. [Not a requirement for the Milwaukee-Racine area.]
- (8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.
- (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- (10) Transportation controls under section 182(c)(5) of the CAA.

(11) Vehicle miles travelled provisions of section 182(d)(1) of the CAA.

(12) NOx requirements under section 182(f) of the CAA.

(13) Attainment demonstration or an alternative as provided under 40 CFR 51.905(a)(1)(ii).

In addition to applicable requirements listed under 40 CFR 51.900(f) and as discussed above, the state must also comply with the 1-hour anti-backsliding requirements discussed in the D.C. Circuit's decisions in *South Coast Air Quality Management Dist. v. EPA*. See III.B.i, above.

Pursuant to 40 CFR 51.905(c), the Milwaukee-Racine area is subject to the obligations set forth in 40 CFR 51.905(a) and 40 CFR 51.900(f). The following paragraphs address the 1-hour ozone SIP requirements applicable to the Milwaukee-Racine area pursuant to all the anti-backsliding requirements described above.

Prior to the revocation of the 1-hour ozone standard on June 15, 2005, the Milwaukee-Racine area was classified as a severe nonattainment area for the 1-hour ozone standard with an attainment deadline of November 15, 2007, and was therefore subject to the ozone SIP requirements for severe 1-hour ozone nonattainment areas contained in sections 182(a) through 182(d) of the CAA. In reviewing Wisconsin's ozone redesignation request for the Milwaukee-Racine area, we assessed whether the area

satisfied the CAA requirements under the 1-hour ozone standard. We conclude that this area and the state of Wisconsin have satisfied all anti-backsliding CAA requirements applicable to a severe ozone nonattainment area by complying with all applicable 1-hour ozone SIP requirements. The following discusses how the applicable CAA requirements have been met in the Milwaukee-Racine area.

40 CFR 51.900(f)(1) and (3) RACT

Section 182(a)(2)(A) of the CAA requires RACT corrections. Section 182(b)(2) requires RACT for each category of VOC sources covered by a CTG and for all other major sources of VOC within an ozone nonattainment area. Section 182(d) specifies requirements for severe ozone nonattainment areas, including a major source emissions cut-off of 25 tons per year.

Under the 1-hour ozone standard, EPA fully approved Wisconsin's VOC RACT regulations as SIP revisions for CTG sources and for major non-CTG sources through rulemakings on the following dates: August 15, 1994 (59 FR 41709), April 27, 1995 (60 FR 20643), June 30, 1995 (60 FR 34170), July 28, 1995 (60 FR 38722), February 12, 1996 (61 FR 5307), February 13, 1996 (61 FR 5514), April 4, 1996 (61 FR 14972), April 9, 1996 (61 FR 15706), April 25, 1996 (61 FR 18257), July 17, 1996 (61 FR 37216), August 29, 1996 (61 FR 45327), June 8, 2000 (65 FR 36351),

November 13, 2001 (66 FR 56931), and September 22, 2006 (71 FR 55287). These RACT SIP revisions include rules covering all non-CTG sources in the Milwaukee-Racine area with the potential to emit VOCs at or in excess of 25 tons per year.

EPA issued CTGs for five source categories in September 2006 and three additional source categories in September 2007. Areas classified as moderate and above for the 1997 8-hour standard were required to submit VOC RACT for the source categories covered by these CTGs by September 2007 and September 2008, respectively. Wisconsin submitted SIP revisions to address these CTGs on September 1, 2009, and November 16, 2011. EPA is taking action on these revisions in a separate rulemaking action. Full approval of Wisconsin's RACT submittals is a prerequisite for approval of the redesignation of the Milwaukee-Racine and Sheboygan areas to attainment.

40 CFR 51.900(f)(2) Vehicle I/M

EPA approved Wisconsin's enhanced I/M program on January 12, 1995 (60 FR 2881), and August 16, 2001 (66 FR 42949).

40 CFR 51.900(f)(4) ROP

Sections 182(b)(1)(A) and 182(c)(2)(B) of the CAA establish the ROP requirements for ozone nonattainment areas. EPA has fully approved Wisconsin's SIP revisions that demonstrate that

Wisconsin achieved ROP in the Milwaukee-Racine area. On March 22, 1996 (61 FR 11735), EPA approved Wisconsin's plan to achieve a 15 percent reduction in VOC emissions in the Milwaukee-Racine area, as required in section 182(b) of the CAA. On October 10, 2001 (66 FR 51572), EPA approved Wisconsin's plan to achieve ROP between 1996 and 1999 in this area, meeting the ROP requirements of section 182(c) of the CAA. Finally, on November 13, 2001 (66 FR 56931), EPA approved Wisconsin's plan to achieve ROP emission reductions for the period of 1999 through 2007.

40 CFR 51.900(f)(5) Stage II Gasoline Vapor Recovery

EPA approved Wisconsin's Stage II rule on August 13, 1993 (58 FR 43080), August 15, 1994 (59 FR 41709), and April 27, 1995 (60 FR 206423).

40 CFR 51.900(f)(6) Clean Fuel Fleet Program

EPA approved Wisconsin's clean fuel fleet program rules as required by section 182(c)(4) of the CAA on March 11, 1996 (61 FR 9639).

40 CFR 51.900(f)(7) Clean Fuels for Boilers

Section 182(e)(3) of the CAA, which requires clean fuels for boilers, does not apply to the Milwaukee-Racine area. This CAA requirement only applies to extreme ozone nonattainment areas.

40 CFR 51.900(f)(8) Traffic Control Measures During Heavy Traffic Hours

This requirement applies to areas subject to section 182(e)(4) of the CAA, which covers extreme ozone nonattainment areas, and, therefore, does not apply to the Milwaukee-Racine area.

40 CFR 51.900(f)(9) Enhanced Ambient Monitoring

On March 18, 1994 (59 FR 1251), EPA approved Wisconsin's SIP revision establishing an enhanced monitoring program for ozone in the Milwaukee-Racine area, as required by section 182(c)(1) of the CAA.

40 CFR 51.900(f)(10) Transportation Control Measures

Within six months of November 15, 1990, and every three years thereafter, section 182(c)(5) of the CAA requires states to submit a demonstration that current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant traffic-related and vehicle emissions-related factors are consistent with those used for the area's ozone attainment demonstration for serious and above 1-hour ozone nonattainment areas. If the levels of relevant parameters that are projected in the attainment demonstration are exceeded, a state has 18 months to develop and submit a revision to the SIP to include TCMS to reduce mobile source emissions to levels consistent with the emission levels in the attainment demonstration.

The section 182(c)(5) requirements are included in those measures subject to EPA's interpretation under EPA's May 10, 1995, Clean Data Policy memorandum. As provided by the clean data policy, since the Milwaukee-Racine area is attaining the 1-hour ozone standard, any requirement for submitting the section 182(c)(5) measures for the Milwaukee-Racine area is suspended. See also 40 CFR 51.918.

40 CFR 51.900(f)(11) Vehicle Miles Travelled

Section 182(d)(1)(A) of the CAA requires severe ozone nonattainment areas to offset the growth in emissions attributed to growth in VMT; to select and implement TCMs necessary to comply with the periodic emission reduction requirements of sections 182(b) and (c); and, to consider TCMs specified in section 108(f) of the CAA, and implement TCMs as necessary to demonstrate attainment with the ozone standard. EPA approved Wisconsin's section 182(d)(1)(A) VMT SIP on May 5, 1995 (60 FR 22284), and September 11, 1995 (60 FR 47088).

40 CFR 51.900(f)(12) NO_x Requirements Under Section 182(f)

Section 182(f) requires major sources of NO_x in an ozone nonattainment area to be covered by emission control requirements equivalent to those required for major sources of VOC, unless EPA waives the NO_x emission control requirements as provided in section 182(f). The section 182(f) NO_x emission control

requirements include NO_x RACT in ozone nonattainment areas required to implement VOC RACT for 1-hour ozone nonattainment areas classified as moderate or above. On February 3, 1998 (63 FR 5460), EPA approved a NO_x emissions control waiver for the Milwaukee-Racine area for the 1-hour ozone standard.

40 CFR 51.900(f)(13) Ozone Attainment Demonstration

On November 13, 2001 (66 FR 56931), EPA approved Wisconsin's 1-hour ozone attainment demonstration SIP revision for the Milwaukee-Racine area.

New Source Review

EPA has determined that an area being redesignated need not have an approved nonattainment NSR program, provided that the state demonstrates maintenance of the standard in the area without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas See III.3.a., above

Transportation Conformity

The conformity portion of the court's ruling does not impact the redesignation request for the Milwaukee-Racine area except to the extent that the court, in its June 8, 2007, decision clarified that, for those areas with MVEBs for the 1-

hour ozone standard, anti-backsliding requires that these MVEBs be used for 8-hour conformity determinations until replaced by MVEBs for the 8-hour ozone standard. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. Note below that EPA is proposing to find adequate and approve 8-hour MVEBs established by Wisconsin's 8-hour ozone maintenance plans for the Milwaukee and Sheboygan areas.

Contingency Measures

The contingency measure requirements under sections 172(c)(9) and 182(c)(9) of the CAA must be addressed in state ozone RFP and attainment demonstration plans. Wisconsin addressed these requirements in the 1-hour ozone RFP and attainment demonstration plans for the Milwaukee-Racine area by adopting and implementing extra VOC and NO_x emission controls that go beyond the emission reductions needed for RFP and attainment of the 1-hour ozone standard. EPA approved these ozone control plans, including their contingency elements as follows: VOC 15 percent RFP plan, March 22, 1996 (61 FR 11735); post-1996 RFP plan, November 10, 2001 (66 FR 51572); and 1-hour ozone attainment demonstration and post-1999 RFP plan, November 13, 2001 (66 FR 56931). Therefore, Wisconsin has met

the contingency requirements of sections 172(c)(9) and 182(c)(9) of the CAA for the 1-hour ozone standard.

Section 185 Source Emission Penalty Fees

EPA approved an excess VOC emissions fee rule for the Milwaukee-Racine area on June 25, 2002 (67 FR 42729). On April 24, 2009 (74 FR 18641), EPA published a final rule making a determination that the Milwaukee-Racine area had attained the 1-hour ozone standard and confirming that this finding of attainment relieved Wisconsin of the obligation to adopt section 185 source penalty fee regulations for this area.

Conclusion

For the reasons discussed above, EPA concludes that Wisconsin has met all part D SIP requirements for the 1-hour ozone standard applicable to the Milwaukee-Racine area for purposes of redesignation, as addressed in the D.C. Circuit's and EPA's anti-backsliding requirements.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting from Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions. (Section 107(d)(3)(E)(iii))

EPA finds that Wisconsin has demonstrated that the observed air quality improvement in the Milwaukee-Racine and Sheboygan areas is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures.

In making this demonstration, the state has calculated the change in emissions between 2005 and 2008. For the nonattainment inventory, Wisconsin used the 2005 emissions inventory developed to meet the comprehensive emissions inventory requirement of section 182(a)(1) of the CAA. The state developed an attainment inventory for 2008, one of the years the Milwaukee-Racine and Sheboygan areas monitored attainment of the 1997 8-hour ozone standard. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Milwaukee-Racine and Sheboygan areas and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented.

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. Automobile Inspection and Maintenance (I/M) program.

Wisconsin operates an enhanced automobile inspection and maintenance program in the Milwaukee-Racine and Sheboygan areas.

ii. Stationary Source NO_x Rules. As part of the state's ROP plan under the 1-hour ozone standard, Wisconsin adopted regulations that control NO_x emissions at electric utilities and large industrial combustion sources and establish NO_x emissions standards for new sources. The regulation of existing sources was estimated to achieve a 55 ton per day reduction by 2007.

iii. Federal Mobile Source Emission Control Measures.

Reductions in VOC and NO_x emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_x emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_x emission reductions will occur nationwide: passenger cars (light duty

vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Heavy-Duty Diesel Engine Rule. In July 2000, EPA issued a rule, effective in 2004, that includes standards limiting the sulfur content of diesel fuel. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO_x and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_x emissions from diesel trucks and busses.

Nonroad Diesel Rule. EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_x emissions from nonroad diesel engines by up to 90 percent. Some of these emission reductions occurred by the attainment years and additional

emission reductions will occur throughout the maintenance period.

iv. New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAPS) and Maximum Achievable Control Technology Standards (MACT). A broad range of emission sectors are subject to Federal NSPS, NESHAP, and MACT standards with compliance requirements which take effect over the attainment period.

v. Control Measures in Upwind Areas. On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_x. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. The reduction in NO_x emissions has resulted in lower concentrations of transported ozone entering the Milwaukee-Racine and Sheboygan areas. Emission reductions resulting from regulations developed in response to the NO_x SIP Call are permanent and enforceable.

b. Emission Reductions.

Wisconsin is using the 2005 emissions inventory developed pursuant to section 182(a)(1) of the CAA as the nonattainment inventory. This inventory is discussed in more detail in section V.C., below. In summary, WDNR developed the point

source inventory using actual reported emissions, EPA's Clean Air Markets Database and EPA techniques for emissions calculation. The area source inventory was created by backcasting Wisconsin's 2008 emissions inventory that was submitted to EPA for the National Emissions Inventory. The nonroad mobile inventory was created using EPA's National Mobile Inventory Model (NMIM) (2009/05/04 version). In addition, emissions estimates were developed for commercial marine vessels, aircraft, and railroads, three nonroad categories not included in the model. The onroad mobile source inventory was developed using EPA's MOVES2010a model. Wisconsin is using the 2008 emissions inventory for the attainment inventory. The point source sector of the emissions inventory was created using annually reported point source emissions, EPA's Clean Air Markets Database, and EPA techniques for emissions calculation. Emissions were estimated by collecting process-level information from each facility that qualifies for inclusion in the state's point source database. Area source emissions estimates were taken from the 2008 emissions inventory developed by WDNR to meet the periodic emissions inventory requirement of 40 CFR part 51, subpart A.

In general, area source emissions estimates were calculated

using population, gasoline consumption, employment, crop acreages, and other activity surrogates along with emission factors. Emission factors were derived from local data, local or national surveys and EPA guidance for the development of emissions inventories. Nonroad emissions estimates were developed using EPA's NMIM (2009/05/04 version). In addition, emissions estimates were developed for commercial marine vessels, aircraft, and railroads, three nonroad categories not included in the model. The onroad mobile source inventory was developed using EPA's MOVES2010a model.

Using the inventories described above, Wisconsin's submittal documents changes in VOC and NO_x emissions from 2005 to 2008 for the Milwaukee-Racine and Sheboygan areas. Emissions data are shown in Tables 2 through 4.

Table 2. Milwaukee-Racine and Sheboygan Area VOC and NO_x Emissions for Nonattainment Year 2005 (tpd)

County	Point		Area		Nonroad		Onroad		Total	
	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x
Milwaukee-Racine Area	13.04	64.24	55.38	14.48	60.30	50.30	46.89	117.20	175.61	246.22
Kenosha County	0.73	32.75	3.28	0.73	5.41	4.32	3.98	9.58	13.40	47.38
Milwaukee County	6.88	28.13	20.65	6.77	15.71	17.94	20.79	53.12	64.03	105.96
Ozaukee County	0.42	0.52	3.79	0.87	2.70	5.44	2.72	6.84	9.63	13.67
Racine County	1.17	0.77	5.88	1.25	7.42	5.70	4.38	10.65	18.85	18.37
Washington County	0.47	0.88	9.71	1.19	6.45	4.08	3.91	9.78	20.54	15.93
Waukesha County	3.37	1.19	12.07	3.67	22.61	12.82	11.11	27.23	49.16	44.91
Sheboygan Area (Sheboygan County)	2.307	17.338	6.879	1.114	6.245	4.389	3.340	8.489	18.771	31.330

Table 3. Milwaukee-Racine and Sheboygan Area VOC and NO_x Emissions for Attainment Year 2008 (tpd)

County	Point		Area		Nonroad		Onroad		Total	
	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x
Milwaukee-Racine Area	12.17	39.16	57.22	14.76	50.02	45.34	36.35	92.74	155.76	192.00
Kenosha County	1.33	8.56	3.39	0.76	4.57	3.94	3.05	7.52	12.34	20.78
Milwaukee County	5.52	26.91	21.19	6.85	12.90	15.83	16.05	41.68	55.66	91.27
Ozaukee County	0.42	0.73	3.99	0.89	2.17	4.66	2.13	5.47	8.71	11.75
Racine County	1.41	1.13	6.17	1.27	6.23	4.99	3.51	8.79	17.32	16.18
Washington County	0.49	0.26	9.97	1.23	5.39	4.10	2.97	7.62	18.82	13.21
Waukesha County	3.00	1.57	12.51	3.76	18.76	11.82	8.64	21.66	42.91	38.81
Sheboygan Area (Sheboygan County)	2.113	12.972	7.064	1.139	5.329	3.689	2.665	6.322	17.171	24.122

Table 4. Comparison of Milwaukee-Racine and Sheboygan Area 2005 and 2008 VOC and NO_x Emissions (tpd)

County	VOC			NO _x		
	2005	2008	Net Change (2005-2008)	2005	2008	Net Change (2005-2008)
Milwaukee-Racine Area	175.61	155.76	-19.85	246.22	192.00	-54.22
Point	13.04	12.17	-0.87	64.24	39.16	-25.08
Area	55.38	57.22	1.84	14.48	14.76	0.28
Nonroad	60.30	50.02	-10.28	50.30	45.34	-4.96
Onroad	46.89	36.35	-10.54	117.20	92.74	-24.46
Sheboygan Area	18.771	17.171	-1.600	31.330	24.122	-7.208
Point	2.307	2.113	-0.194	17.338	12.972	-4.366
Area	6.879	7.064	0.185	1.114	1.139	0.025
Nonroad	6.245	5.329	-0.916	4.389	3.689	-0.700
Onroad	3.340	2.665	-0.675	8.489	6.322	-2.167

Table 4 shows that the Milwaukee-Racine area reduced VOC emissions by 19.85 tpd and NO_x emissions by 54.22 tpd between 2005 and 2008 and the Sheboygan area reduced VOC emissions by

1.600 tpd and NO_x emissions by 7.208 tpd between 2005 and 2008. Based on the information summarized above, Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA. (Section 107(d)(3)(E)(iv))

In conjunction with its requests to redesignate the Milwaukee-Racine and Sheboygan nonattainment areas to attainment status, WDNR submitted SIP revisions to provide for the maintenance of the 1997 8-hour ozone NAAQS in the areas through 2022.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan

must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future violations of the 1997 8-hour ozone standard.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: the attainment VOC and NO_x emissions inventories, a maintenance demonstration showing maintenance for ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

WDNR developed an emissions inventory for 2008, one of the years Wisconsin used to demonstrate monitored attainment of the 1997 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 3, above.

c. Demonstration of Maintenance

Along with the redesignation requests, WDNR submitted revisions to the 8-hour ozone SIP to include maintenance plans

for the Milwaukee-Racine and Sheboygan areas, in compliance with section 175A of the CAA. These demonstrations show maintenance of the 1997 8-hour ozone standard through 2022 by assuring that current and future emissions of VOC and NO_x for the Milwaukee-Racine and Sheboygan areas remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099-53100 (October 19, 2001), 68 FR 25413, 25430-25432 (May 12, 2003).

Wisconsin is using emissions inventories for the years 2015 and 2022 to demonstrate maintenance. The emissions inventories were developed as described below.

Electric Generating Unit (EGU) point source emissions for 2018 were estimated using IPM3.0. Non-EGU point source emissions for 2018 were derived by applying growth and control factors, developed by Pechan for the Lake Michigan Air Directors Consortium (LADCO), to the 2005 inventory. Growth factors were initially based on the Economic Growth and Analysis System (EGAS) model and were modified for select priority categories by examining emissions activity data. Projected emissions for 2015 and 2022 were estimated using linear interpolation and

extrapolation from 2008 and 2018 emissions estimates.

Area source emissions inventories were created by projecting the 2008 emissions inventory. The emission projections were primarily based on growth factors from the EGAS model. If EGAS growth factors were not available, population based growth factors were used.

Nonroad emissions estimates were developed using EPA's NMIM model (2009/05/04 version). In addition, emissions estimates were developed for commercial marine vessels, aircraft, and railroads, three nonroad categories not included in the model. Onroad emissions estimates were generated using the MOVES2010a model.

Emissions data are shown in Tables 5 through 7 below.

Table 5. Milwaukee-Racine and Sheboygan Area VOC and NO_x Emissions for Maintenance Year 2015 (tpd)

County	Point		Area		Nonroad		Onroad		Total	
	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x
Milwaukee-Racine Area	15.89	45.35	53.53	13.63	30.58	29.60	21.08	51.22	121.08	139.80
Kenosha County	0.99	13.12	3.17	0.71	2.71	2.73	1.82	4.18	8.69	20.74
Milwaukee County	8.37	29.42	19.64	6.20	8.37	10.40	9.10	23.08	45.48	69.10
Ozaukee County	0.52	0.74	3.81	0.84	1.37	2.89	1.24	2.98	6.94	7.45
Racine County	1.47	0.76	5.85	1.18	3.63	3.46	2.05	4.76	13.00	10.16
Washington County	0.51	0.15	9.34	1.17	3.32	2.51	1.77	4.24	14.94	8.07
Waukesha County	4.03	1.16	11.72	3.53	11.18	7.61	5.10	11.98	32.03	24.28
Sheboygan Area (Sheboygan County)	2.895	11.486	6.568	1.067	3.263	2.432	2.024	4.321	14.750	19.306

Table 6. Milwaukee-Racine and Sheboygan Area VOC and NO_x Emissions for Maintenance Year 2022 (tpd)

County	Point		Area		Nonroad		Onroad		Total	
	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x	VOC	NO _x
Milwaukee-Racine Area	19.61	51.57	59.83	13.51	23.55	21.13	15.98	31.91	118.97	118.12
Kenosha County	0.65	17.68	3.50	0.72	1.84	1.94	1.41	2.64	7.40	22.98
Milwaukee County	11.22	31.93	21.88	6.03	7.48	7.76	6.78	14.18	47.36	59.90
Ozaukee County	0.63	0.76	4.33	0.85	1.19	1.83	0.95	1.88	7.10	5.32
Racine County	1.52	0.39	6.63	1.17	2.44	2.57	1.58	3.00	12.17	7.13
Washington County	0.53	0.05	10.43	1.20	2.52	1.59	1.36	2.69	14.84	5.53
Waukesha County	5.06	0.76	13.06	3.54	8.08	5.44	3.90	7.52	30.10	17.26
Sheboygan Area (Sheboygan County)	3.677	10.000	7.256	1.074	2.189	1.876	1.615	2.778	14.737	15.728

Table 7. Comparison of Milwaukee-Racine and Sheboygan Area 2008, 2015 and 2022 VOC and NO_x Emissions (tpd)

County	VOC				NO _x			
	2008	2015	2022	Net Change (2008-2022)	2008	2015	2022	Net Change (2008-2022)
Milwaukee-Racine Area	155.76	121.08	118.97	-36.79	192.00	139.80	118.12	-73.88
Point	12.17	15.89	19.61	7.44	39.16	45.35	51.57	12.41
Area	57.22	53.53	59.83	2.61	14.76	13.63	13.51	-1.25
Nonroad	50.02	30.58	23.55	-26.47	45.34	29.60	21.13	-24.21
Onroad	36.35	21.08	15.98	-20.37	92.74	51.22	31.91	-60.83
Sheboygan Area	17.171	14.750	14.737	-2.434	24.122	19.306	15.728	-8.394
Point	2.113	2.895	3.677	1.564	12.972	11.486	10.000	-2.972
Area	7.064	6.568	7.256	0.192	1.139	1.067	1.074	-0.065
Nonroad	5.329	3.263	2.189	-3.140	3.689	2.432	1.876	-1.813
Onroad	2.665	2.024	1.615	-1.050	6.322	4.321	2.778	-3.544

The emission projections show that WDNR does not expect emissions in the Milwaukee-Racine and Sheboygan areas to exceed the level of the 2008 attainment year inventory during the

maintenance period. In the Milwaukee-Racine area, WDNR projects VOC emissions to decrease by 36.79 tpd and NO_x emissions to decrease by 73.88 tpd between 2008 and 2022. In the Sheboygan area, WDNR projects VOC emissions to decrease by 2.434 tpd and NO_x emissions to decrease by 8.394 tpd between 2008 and 2022.

Further, ozone modeling performed by the Lake Michigan Air Directors Consortium supports the conclusion that the Milwaukee-Racine and Sheboygan areas will maintain the 1997 8-hour ozone standard throughout the maintenance period. Peak modeled ozone levels in the Milwaukee-Racine area for 2012 and 2018 are 0.080 ppm, and 0.077 ppm, respectively. Peak modeled ozone levels in the Sheboygan area for 2012 and 2018 are 0.081 ppm, and 0.076 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; e.g., consent decrees, rules, the NO_x SIP Call, Federal motor vehicle control programs, etc.

As part of its maintenance plans, the state elected to include "safety margins" for the areas. A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan, which continues to demonstrate attainment of the standard. The attainment level of emissions

is the level of emissions during one of the years in which the area met the NAAQS. The Milwaukee-Racine and Sheboygan areas attained the 8-hour ozone NAAQS during the 2006-2008, 2007-2009, and 2008-2010 time periods. Wisconsin used 2008 as the attainment level of emissions for the areas. In the maintenance plans, WDNR projected emission levels for 2022. For the Milwaukee-Racine area, the emissions from point, area, nonroad, and onroad mobile sources in 2008 equaled 155.76 tpd of VOC. WDNR projected VOC emissions for the year 2022 to be 118.97 tpd of VOC. The SIP submission demonstrates that the Milwaukee-Racine area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 36.79 tpd of VOC for 2022. By this same method, for the Milwaukee-Racine area, 73.88 tpd (*i.e.*, 192.00 tpd less 118.12 tpd) is the safety margin for NO_x for 2022. For the Sheboygan area, the safety margin for 2022 is 2.434 tpd of VOC and 8.394 tpd of NO_x. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Wisconsin currently operates ten ozone monitors in the Milwaukee-Racine area and one monitor in the Sheboygan area. WDNR has committed to continue to monitor ozone levels in the areas. WDNR will work with EPA should changes in siting become necessary. Wisconsin remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Milwaukee-Racine and Sheboygan areas depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. Wisconsin's plan for verifying continued attainment of the 8-hour standard in the Milwaukee-Racine and Sheboygan consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. WDNR will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted contingency plans for the Milwaukee-Racine and Sheboygan areas to address possible future ozone air quality problems. A contingency plan response will be triggered whenever a three-year average fourth-high monitored value of 0.085 ppm or greater

is monitored within the maintenance area. When a response is triggered, WDNR will evaluate existing but not fully implemented, forthcoming, and, if necessary, new control measures to correct the violation of the standard within 18 months. Wisconsin has confirmed EPA's interpretation that this commitment means that the measure will be adopted and implemented within 18 months of the triggering event. In addition, it is EPA's understanding that to acceptably address a violation of the standard, existing and forthcoming control measures must be in excess of emissions reductions included in the projected maintenance inventories.

WDNR included the following list of potential contingency measures in its maintenance plans:

- i. Broaden the application of the NO_x RACT program by including a larger geographic area, and/or including sources with potential emissions of 50 tons per year, and/or increasing the cost-effectiveness thresholds utilized as a basis for Wisconsin's NO_x RACT Program;
- ii. Develop an anti-idling control program for mobile sources targeting diesel vehicles;
- iii. Adopt a rule reducing VOC content in architectural, industrial and maintenance coatings; and

- iv. Adopt a rule reducing VOC content in commercial and consumer products.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, WDNR commits to submit to the EPA updated ozone maintenance plans eight years after redesignation of the Milwaukee-Racine and Sheboygan areas to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Wisconsin has committed to retain the VOC and NO_x control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plans adequately address the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revisions submitted by Wisconsin for the Milwaukee-Racine and Sheboygan areas meet the requirements of section 175A of the CAA.

B. Adequacy of Wisconsin's MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Milwaukee-Racine and Sheboygan Areas?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.*, RFP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from onroad transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that

transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively approve or find that the MVEBs are "adequate" for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to

comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plans submitted by Wisconsin for the Milwaukee-Racine and Sheboygan areas contain new VOC and NO_x MVEBs for the areas for the years 2015 and 2022. The availability of the SIP submission with these 2015 and 2022 MVEBs was announced for public comment on EPA's Adequacy Website on December 6, 2011, at:

<http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>.

The EPA public comment period on adequacy of the 2015 and 2022 MVEBs for the Milwaukee-Racine and Sheboygan areas closed on January 5, 2012. No adverse comments on the submittal were received during the adequacy comment period. The submitted maintenance plan, which included the MVEBs, was endorsed by the Governor (or his or her designee) and was subject to a state public hearing. The MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 1997 8-hour ozone standard.

EPA, through this rulemaking, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Milwaukee-Racine and Sheboygan areas, because EPA has determined that the areas can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. WDNR has determined the 2015 MVEBs for the Milwaukee-Racine and Sheboygan areas to be 21.08 tpd for VOC and 51.22 tpd for NO_x, and 2.024 tpd for VOC and 4.321 tpd for NO_x, respectively. WDNR has determined the 2022 MVEBs for the Milwaukee-Racine and Sheboygan areas to be 15.98 tpd for VOC and 31.91 tpd for NO_x, and 1.615 tpd for VOC and 2.778 tpd for NO_x, respectively. These MVEBs are consistent with the onroad mobile source VOC and NO_x emissions projected by the Wisconsin Department of Transportation for 2015 and 2022, as summarized in Table 7 above. Wisconsin has demonstrated that the Milwaukee-Racine area can maintain the 8-hour ozone NAAQS with mobile source emissions of 21.08 tpd and 15.98 tpd of VOC and 51.22 tpd and 31.91 tpd of NO_x in 2015 and 2022, respectively, since emissions will remain under attainment year emission levels. Wisconsin has demonstrated that the Sheboygan area can maintain the 8-hour ozone NAAQS with mobile source emissions of 2.024 tpd

and 1.615 tpd of VOC and 4.321 tpd and 2.778 tpd of NO_x in 2015 and 2022, respectively, since emissions will remain under attainment year emission levels.

C. 2005 Comprehensive Emissions Inventory

As discussed above, section 182(a)(1) of the CAA requires states containing areas classified as marginal and above to submit a comprehensive emissions inventory. As part of Wisconsin's redesignation request for the Milwaukee-Racine and Sheboygan areas, the state submitted a 2005 comprehensive emissions inventory. Emissions contained in the submittal cover the general source categories of point sources, area sources, nonroad mobile sources and onroad mobile sources.

WDNR developed the point source inventory using annually reported point source emissions, EPA's Clean Air Markets Database and EPA techniques for emissions calculation. Where feasible, Federal, state and local controls were factored into the emission calculations. Emissions were estimated by collecting process-level information from each facility that qualifies for inclusion in the Wisconsin's point source database.

The area source inventory was created by backcasting Wisconsin's 2008 emissions inventory that WDNR submitted to EPA

for the National Emissions Inventory. The backcasting factors were primarily based on growth factors from the EGAS model. If growth factors were not available for source classification code, population based growth factors were used.

The nonroad mobile inventory was created using NMIM (2009/05/04 version). In addition, emissions estimates were developed for commercial marine vessels, aircraft, and railroads, three nonroad categories not included in the model. Through LADCO, Pechan, an independent contractor, provided marine and rail emission estimates. Aircraft emissions were calculated using the Federal Aviation Administration's Emissions and Dispersion Modeling System.

The Onroad mobile source inventory was developed using EPA's MOVES2010a model. Emissions estimates were made in accordance with the User Guide for MOVES2010a⁴ and Technical Guidance on the Use of MOVES2010 for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity⁵.

⁴ U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division, August 2010, EPA-420-B-10-036.

⁵ U.S. EPA, Office of Transportation and Air Quality, Transportation and Regional Programs Division, April 2010, EPA-420-B-10-023.

The 2005 emissions estimates are summarized in Table 2, above. EPA is proposing to approve the 2005 emissions inventory as meeting the section 182(a)(1) comprehensive emissions inventory requirement for the Milwaukee-Racine and Sheboygan areas.

VI. Summary of Actions.

After evaluating the redesignation requests submitted by Wisconsin, EPA concludes that the requests meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Milwaukee-Racine and Sheboygan areas from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA is also proposing to approve Wisconsin's maintenance plan SIP revisions for the Milwaukee-Racine and Sheboygan areas. EPA's proposed approval of the maintenance plans is based on the state's demonstration that the plans meet the requirements of section 175A of the CAA, as described more fully above. EPA is also proposing to approve WDNR's 2005 comprehensive emissions inventories for the Milwaukee-Racine and Sheboygan areas as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA finds adequate under 40 CFR 93.118(e) and is

proposing to approve Wisconsin's 2015 and 2022 MVEBs for the Milwaukee-Racine and Sheboygan areas.

VII. **Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the

status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands. However, because there are tribal lands located in Milwaukee County, we provided the affected tribe with the opportunity to consult with EPA on the redesignation. The affected tribe raised no concerns with the proposed rule.

List of Subjects*40 CFR part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: January 31, 2012.

Susan Hedman,
Regional Administrator, Region 5.

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